

CHAPTER I

INTRODUCTION

A. Background of Study

The rapidly growing trend of increasing interest of Indonesians in Japanese products and services implies huge opportunities for establishing a bilateral investment. Nowadays, for instance, Indonesians have shown a strong and growing preference for Japanese products, particularly in the automotive industry sector stands out as a key driver of Indonesia's economy, with car production in 2022 rising by 31% to 1,470,140 units.¹ Japanese car manufacturers dominate the Indonesian market, with Toyota alone holding over 36.3% market share, followed by Daihatsu (13.5%), Honda (11.3%), Mitsubishi (8.1%), and Suzuki (7.5%) as of November 2024². This strong presence reflects a deep-rooted economic partnership and consumer trust in Japanese automotive brands. These figures indicate not only Japan's economic footprint in Indonesia but also the strategic interdependence between the two nations in this vital sector. Japan's leading-edge technology, particularly in automobiles, electronics, and machinery, aligns with Indonesia's development needs, which has the potential to elevate this interest into a more robust economic cooperation. This cultural tendency, coupled with the possibility of deepening economic relations, makes Japan an ideal candidate to explore the

¹ Business-Indonesia. "Automotive" Accessed, January 12, 2025. <https://business-indonesia.org/automotive>.

² MarkLines, "Indonesia, Automotive Sales Volumes 2024." Accessed January 12, 2025. https://www.marklines.com/en/statistics/flash_sales/automotive-sales-in-indonesia-by-month.

necessity of a more specific Bilateral Investment Treaty (BIT) with, to address dynamic trade and investment issues.

In recent years, the relationship between Indonesia and Japan has been marked by both commercial transactions and an increasing inclination among the younger generation in Indonesia to consume Japanese culture and products. The growing popularity of Japanese animation, fashion, cuisine, and culture in general demonstrates a strong cultural bond that highlights the potential for additional economic cooperation between both countries. The diplomatic relations between Indonesia and Japan, which were formed in 1958, have developed over the years to include diverse collaborative initiatives spanning economic, political, and cultural spheres. The strategic cooperation has been reinforced by other agreements, including the Indonesia-Japan Economic Partnership Agreement (IJEPA).³

IJEPA, which entered into force through the President Regulation No. 36 of 2008, is the only bilateral framework that Indonesia and Japan use to cover their economic activities. Furthermore, IJEPA is the sole foundation for investment-related provisions that safeguard both countries. Several chapters are covered under this agreement regarding the service sector, such as Trade in Service (TIS), Movement of Natural Persons (MNP), Cooperation, Government Procurement, and Investment.⁴

³ Ditjen PPI. "Perundingan Jasa Bilateral." Accessed April 28, 2024. [https://ditjenppi.kemendag.go.id/perdagangan-jasa/perundingan-jasa/perundingan-jasa-bilateral#:~:text=Indonesia%20Japan%20Economic%20Partnership%20Agreement%20\(IJEPA\)&text=Indonesia%20dan%20Jepang%20telah%20menandatangani,Perpres%20no.%2036%20tahun%202008.](https://ditjenppi.kemendag.go.id/perdagangan-jasa/perundingan-jasa/perundingan-jasa-bilateral#:~:text=Indonesia%20Japan%20Economic%20Partnership%20Agreement%20(IJEPA)&text=Indonesia%20dan%20Jepang%20telah%20menandatangani,Perpres%20no.%2036%20tahun%202008.)

⁴ Indonesia-Japan Economic Partnership Agreement (IJEPA), Ministry of Trade of the Republic of Indonesia, signed August 20, 2007, entered into force July 1, 2008,

Despite its significance, the Indonesia-Japan Economic Partnership Agreement (IJEPA) has seen many issues in its implementation, hence the necessity to review its provisions thoroughly. For instance, the Movement of Natural Persons (MNP) under IJEPA has seen operational problems due to differences in labor standards and immigration policies between the two countries, particularly in response to the growing demand for Indonesian caregivers in Japan. These challenges are reflected in the low passing rate of Indonesian nurses in the national exam, with only 87 of 481 candidates (18%) passing between 2010 and 2014⁵ as well as caregivers which had a higher passing rate (62.4% in 2017 and 38.5% in 2018) due to their nursing background.⁶ Additionally, in the automotive sector, the provisions aimed at facilitating cooperation and technology transfer have not kept pace with the advancements in electric and hybrid vehicle technologies, which are poised to play a pivotal role in shaping the future of bilateral trade relations.

Similarly, while there are references to cooperation in the environment,⁷ in the treaty they do not adequately address the increasing importance of green technology and renewable energy areas where increased investment and partnership arrangements can generate huge benefits to both parties. These failures imply that IJEPA, which was originally crafted to address economic conditions over a decade ago, should be updated to include provisions that are sensitive to the changing character of both the world and bilateral trade. It would be required to upgrade

⁵ Efendi, F., T. K. Mackey, M.-C. Huang, and C.-M. Chen. 2017. "IJEPA: Gray Area for Health Policy and International Nurse Migration." *Nursing Ethics* 24, no. 3: 318

⁶ Nugraha, S., T. W. Raharjo, and Y. Hirano. "Migration of the Indonesian Care Workforce in Response to the Ageing Population, and Future Challenges." In *Coping with Rapid Population Ageing in Asia*, edited by O. Komazawa and Y. Saito, Jakarta: ERIA, 2021: 78.

⁷ See Article 74 of IJEPA related to the environment measure

IJEPA with more specific rules; such as enhanced investor protection, simpler labor mobility provisions, and clear incentives for high-tech and green industries, to make it to be more effective in promoting bilateral investment between Indonesia and Japan.

Besides the bilateral agreement, other regional agreements that have investment-related provisions exist and are currently enforced, such as the ASEAN – Japan Economic Partnership Agreement (AJEPA) and the Regional Comprehensive Economic Partnership Agreement (RCEP). While these regional agreements provide a wider framework for economic cooperation and investment, they often lack the specificity and tailored protections that a dedicated Bilateral Investment Treaty can offer. Though the IJEPA is an important bilateral agreement covering areas like trade in services, movement of natural persons, and also investment, it does not cover the complexities of direct foreign investments and their changing needs.

In the absence of a Bilateral Investment Treaty (BIT), Indonesia and Japan are highly dependent on IJEPA and its multilateral agreements, such as AJCEP and RCEP, respectively. While these are extremely valuable, they may not provide the amount of detailed protection and dispute resolution mechanisms that a BIT could offer. A BIT would hence enable Indonesia and Japan to solidify their investment relationship through clearer, more robust protections for the economic realities and regulatory environments of both countries. This would not only raise the faith of investors but also encourage more FDI, which is highly necessary to achieve sustained economic growth and development in both countries.

Recently, Indonesia and Japan have committed to eliminating additional trade barriers, thereby promoting bilateral trade and investment. This development highlights the significance of increasing economic connections between the two countries.⁸ This mutual commitment is further enhanced with strategic investments by Japan in Indonesia, especially in the automotive, electronics, and renewable energy sectors. In 2023, Japanese investment in Indonesia reached a total of \$4.63 billion, placing Japan as the fourth-largest foreign investor.⁹ These investments have enabled the implementation of projects such as the Jakarta MRT, which serves as an emblem of Japan's significant contribution to the development of infrastructure, as well as progress in electric and hybrid vehicle technology through the ASEAN-Japan Next Generation Automotive Industry Collaboration Initiative. Furthermore, partnerships in renewable energy and biofuel technologies represent opportunities for strengthening economic cooperation further to achieve shared goals of carbon neutrality and sustainable development.¹⁰

On the other hand, Indonesian investment in Japan, while modest in scale compared to Japanese investments in Indonesia, has over the years shown diversification and growth. Cooperations with Japan in the field of renewable energy have become more significant as the country tries to tap into its abundant natural resources while charting a path toward a sustainable energy future. Through

⁸ Reuter. "Indonesia and Japan Agree on Removing More Trade Barriers." December 16, 2023. <https://www.reuters.com/world/asia-pacific/indonesia-japan-agree-removing-more-trade-barriers-2023-12-16/>.

⁹ "Investment in Indonesia: Unlocking Opportunities." Law.asia. Accessed December 5, 2024. <https://law.asia./japan-investment-in-indonesia/>.

¹⁰ "Indonesia, Japan Intensify Cooperation in Automotive Sector." *Antara News*. Accessed December 5, 2024. <https://en.antaranews.com/news/317172/indonesia-japan-intensify-cooperation-in-automotive-sector/>.

initiatives such as the Asia Zero Emission Community (AZEC), Indonesia and Japan have signed numerous agreements designed to improve collaboration in diverse renewable energy technologies. The cooperation will work on the development of a comprehensive plan to achieve Net Zero Emissions by 2060, as emphasized in the newly signed Memorandum of Cooperation between the two nations.¹¹

Thus, in this case, Bilateral Investment Treaties (BITs) are important and serve as the tools for encouraging and safeguarding foreign investments.¹² They establish a set of norms and regulations that provide stability and protection to investors, such as clear guidance about the expropriation of investments, guaranteeing that in the event of expropriation, investors are promptly, sufficiently, and efficiently compensated.¹³ BITs can promote a favorable investment climate, which can attract foreign capital, spur economic expansion, and ease the exchange of technology and knowledge among nations.

Moreover, a BIT between Indonesia and Japan would be particularly significant in addressing the demographic challenges faced by Japan. With a rapidly aging population,¹⁴ Japan is in dire need of caregivers, and Indonesia, with its large and young population, could provide a valuable source of caregivers. A BIT would

¹¹ "Indonesia, Japan Ink Deal on Energy Transition," Setkab.go.id, accessed December 5, 2024, <https://setkab.go.id/en/indonesia-japan-ink-deal-on-energy-transition/>.

¹²Liberti, Lahra. "Intellectual Property Rights in International Investment Agreements: An Overview." *OECD Working Papers on International Investment* 2010/1. OECD Publishing, 2010.

¹³ United States Trade Representative. "Bilateral Investment Treaties." Accessed n.d. <https://ustr.gov/trade-agreements/bilateral-investment-treaties#:~:text=BITs%20establish%20clear%20limits%20on,a%20market%20rate%20of%20exchange>.

¹⁴ Yamada, Minoru, and Hidenori Arai. "Long-term care system in Japan." *Annals of Geriatric Medicine and Research* 24, no. 3 (2020): 174.

provide a framework for Indonesian caregivers to work in Japan, while also ensuring that Japanese technology and investment flow into Indonesia, creating jobs and stimulating economic growth. This would be a win-win situation for both countries, as Japan would benefit from the influx of caregivers, and Indonesia would gain from the transfer of technology and investment.

Despite the importance of BITs, as of late 2012, many states have either withdrawn or terminated their existing BITs.¹⁵ They are showing it as a contemporary and irregular worldwide phenomenon that contradicts previous norms. Indonesia is no exception. Ever since it terminated its BIT with the Netherlands in 2014, in the present days, 31 out of 73 BITs that are either signed or in-forced have been terminated.¹⁶

This is not without reason, as the results of the Churchill Mining and Planet Mining arbitration tribunals may have strongly impacted the decision.¹⁷ Indonesia has received favorable awards from the International Centre for Settlement of Investment Disputes (ICSID). However, the verdicts were based on the fact that there was a lack of clarity in the relevant Bilateral Investment Treaties (BITs) between Indonesia and Australia, as well as between Indonesia and the United Kingdom, regarding the specific clause of choice of forum. Based on a reasonable assumption, the Indonesian government may have interpreted this as a request to

¹⁵ Mahardhika, Nur Gemilang. "An Epilogue to Bilateral Investment Treaties Regime and the Fate of Foreign Investments Protection in Indonesia." *Jurnal Hukum Ius Quia Iustum* 29, no. 1 (2022): 97.

¹⁶ United Nations Conference on Trade and Development (UNCTAD). "Indonesia Bilateral Investment Treaties." *Investment Policy Hub*. Accessed April 28, 2024. <https://investmentpolicy.unctad.org/>.

¹⁷ Churchill Mining PLC and Planet Mining Pty Ltd v. Republic of Indonesia, ICSID Case No. ARB/12/14 and 12/40, <https://www.italaw.com/cases/1479>

reevaluate and renegotiate its current bilateral investment treaties (BITs), as terminating these agreements is believed to be the way to achieve that desired outcome. On the other hand, without Bilateral Investment Treaties (BITs), foreign investors may lose their ability to exercise their most important right, which is to file a claim against the government of the host state in an investor-state dispute settlement (ISDS) forum in the event of an investment dispute.¹⁸

In any case, establishing a Bilateral Investment Treaty becomes one of the most important topics concerning the changing economic environment and growing trend of economic relations between Indonesia and Japan. Although existing mechanisms like IJEPA, AJEPA, and RCEP provide ample guidelines on economic cooperation, they generally fall short in the field of foreign direct investment because of a lack of comprehensiveness. A BIT would offer specific protection and clearer rules, which are basic to increase the faith of the investors and to promote greater FDI necessary for the sustainable economic development of both countries. Considering Indonesia's recent trend of terminating BITs, a new agreement with Japan could be a strategic action that solidifies investment relationships and adapts to changing economic realities. It would increase the legal certainty for investors and at the same time make the investment climate easier; this will contribute to the economic development of Indonesia and Japan.

B. Problem Formulation

Regarding the elaborations mentioned above, my research intends to address two issues:

¹⁸ Mahardika, *loc.cit.*

1. How to establish a potential Bilateral Investment Treaty (BIT) between Indonesia and Japan to bridge IJEPA?
2. What specific provisions should be included in the potential BIT to strengthen investment relations between Indonesia and Japan?

C. Objectives of Research

The objectives of this research are:

1. To analyze how a potential Bilateral Investment Treaty (BIT) between Indonesia and Japan to bridge IJEPA can be established.
2. To identify specific provisions that should be included in the new BIT to strengthen investment relations between Indonesia and Japan.

D. Originality of Research

This research thoroughly analyzes and identifies the possibility of establishing BIT between Indonesia and Japan. Although there were similar topics that discussed the development of BIT, procedural provision of BITs regarding the jurisdiction of resolving investment disputes, or research about the possibilities of BIT's termination, there was no research that specified the possibility of establishing BIT between both countries aforementioned.

First, Luke Eric Peterson in his book "Bilateral Investment Treaties and Development Policy-Making"¹⁹ mainly writes about the general theory of BIT as well as the challenges and impacts of establishing a BIT. He criticizes that while these treaties offer broad protections to foreign investors, they often fail to stimulate

¹⁹Peterson, Luke Eric, International Institute for Sustainable Development, and Direction du développement et de la coopération (Switzerland). *Bilateral Investment Treaties and Development Policy-Making*. International Institute for Sustainable Development, 2004.

significant new foreign direct investment. The treaties' provisions, particularly those related to dispute settlement, lack transparency and precedence, allowing well-resourced investors to challenge regulatory actions creatively. This creates uncertainty for developing countries, as treaty obligations may hinder their abilities to pursue key social, cultural, or environmental policies. Peterson advises developing nations to exercise caution and conduct thorough assessments before entering into future BITs. Thus, this research covers the general principle of BIT rather than on the formulation of specific BIT between countries.

Second, in contrast with the possibility of forming a new BIT, Nur Gemilang Mahardika in her Journal “An Epilogue to Bilateral Investment Treaties Regime and The Fate of Foreign Investment Protection In Indonesia” wrote about the implication of Indonesia’s termination of its BITs that is driven by the realization of economic nationalism and the needs to reassess BITs that are no longer align with Indonesia’s development goals. However, despite the absence of BIT, according to her, foreign investments remain protected through the sunset clauses of terminated treaties, investor-state contracts, and Indonesia's national laws, as well as investment provisions in Regional Trade Agreements (RTAs).²⁰

Third, an article titled “The New Model of Bilateral Investment Treaty (BIT) for Indonesia” written by Sefriani, laid the groundwork for the BIT model for Indonesia that can be considered in the future during the forming of a new BIT. Sefriani's proposed model emphasizes the need for a balanced approach that

²⁰ Nur Gemilang Mahardika, "An Epilogue to Bilateral Investment Treaties Regime and the Fate of Foreign Investments Protection in Indonesia," *Jurnal Hukum IUS QUIA IUSTUM* 29, no. 1 (2022): 93-117, <https://doi.org/10.20885/iustum.vol29.iss1.art5>.

protects both the interests of foreign investors and the host state, Indonesia. She suggests that the new BIT model should redefine unclear terms, such as "investment" and "foreign investors," to prevent broad interpretations that may harm Indonesia. Additionally, she recommends reformulating the Fair and Equitable Treatment (FET) principle with clear standards, obliging investors to exhaust local remedies before bringing disputes to international arbitration, and requiring written consent from both parties before initiating ISDS mechanisms.²¹

No.	Sources	Research Outcome	Main Differences with This Research
1.	Peterson, Luke Eric, International Institute for Sustainable Development, and Direction du développement et de la coopération (Switzerland). <i>Bilateral Investment Treaties and Development Policy-Making</i> . International Institute for Sustainable Development, 2004.	Explained specifically about the general principle of BIT along with its development in policy-making.	This research explained the development of BIT and its policy-making regarding its model specifically for two countries, which are Indonesia and Japan.
2.	Nur Gemilang Mahardhika, "An Epilogue to Bilateral Investment Treaties Regime and the Fate of Foreign Investments Protection in Indonesia," <i>Jurnal Hukum IUS QUIA IUSTUM</i> 29, no. 1 (2022): 93-117	Elaborated the shifting trends of BIT in Indonesia due to several reasons developed in the past decade albeit its importance. Thus, there needs to be a thorough reconsideration in forming a new one.	In contrast, this research will elaborate on the possibility of creating a new BIT in Indonesia positively by considering its potential benefits such as fostering economic growth, enhancing investor confidence, and strengthening

²¹ Sefriani. "The New Model of Bilateral Investment Treaty (BIT) for Indonesia." *Journal of Legal, Ethical and Regulatory Issues* 21, Special Issue (2018): 1-14.

			bilateral cooperation between Indonesia and Japan.
3.	Sefriani. "The New Model of Bilateral Investment Treaty (BIT) for Indonesia." <i>Journal of Legal, Ethical and Regulatory Issues</i> 21, Special Issue (2018): 1-14.	The ideal model of Indonesian BIT that serves best for the national interest.	Model of BIT that possibly works for both Indonesia and Japan.

E. Literature Review

1. Bilateral Investment Treaty

A Bilateral Investment Treaty (BIT) or bilateral investment agreement is a reciprocal agreement between two countries that aims to promote and safeguard investments within each other's territories. The primary objective of a BIT is to shield foreign investors from unfair treatment by the host country and to prevent them from acquiring undue rights and interests in their assets.²² The BIT was first signed in 1959 between Germany and Pakistan, and since then, there are currently 3406 BITs that have been signed, whether currently enforced or not enforced.²³

The BIT is based on six basic principles of investor protection that create a stable and predictable investment climate. First, National

²² Laura Natalia Sembiring, "Urgensi Perjanjian Investasi Bilateral Antara Indonesia dan Negara Lain dengan Klausula Penyelesaian Sengketa Investor-State Dispute Settlement," *"Dharmasisya" Jurnal Program Magister Hukum FHUI 1* (2022): 22.

²³ United Nations Conference on Trade and Development. "International Investment Agreements: Advanced Search." Investment Policy Hub, 2024, <https://investmentpolicy.unctad.org/international-investment-agreements/advanced-search>.

Treatment and Most Favored Nation (MFN) requires equal treatment of foreign investors, no constraints on labor recruitment, and no restrictions on the import/export functions. Second, the principle of Fair and Equitable Treatment (FET) prohibits arbitrary conduct by public institutions and thus shields investors from unjust or unreasonable treatment.

Third, security under the BIT protects the investors against uncompensated takeover, war, and civil unrest and guarantees free currency transfer. Fourth, it upholds the principle of non-discrimination, ensuring that no unreasonable or unlawful treatment would occur. Fifth, it should offer transparency; a transparent environment develops a regulation-based investment regime that prevents corruption and due process. Finally, the BIT establishes a procedure of dispute resolution- ISDS-between investors and states, something that has become a characteristic of many regional and international investment agreements and that further improves the investment climate as a whole.²⁴

Furthermore, on top of safeguarding the investors, some BIT might provide “special and differential treatment” to give developing countries leisure and flexibility. Such examples when it occurs can be seen as follows:²⁵

²⁴ Sefriani, op.cit., p.5

²⁵ Peterson, Luke Eric, op.cit., p. 5

- a. Flexible Obligations:** Developed nations may allow developing countries to avoid certain obligations. For example, early BITs did not always require national treatment (the equal treatment of foreign investors to local investors). However, this level of flexibility usually only arises when the developing country has strong bargaining power, as was true in the case of China in the 1980s, which agreed to national treatment only "to the extent possible."
- b. Sectoral Exceptions:** Some treaties permit countries to safeguard certain industries from the treaty. For example, Canadian BITs usually contain an annex in which parties may reserve industries like social services from national treatment. However, these sectoral exceptions are rare in treaties from countries like the U.K. and Switzerland. A few exceptions exist, such as the 2002 U.K.-Vietnam BIT, which exempts sectors like media, banking, and tourism.
- c. Support for Local Industries:** Some treaties allow a derogation for local small-scale industries, providing the ability for governments to offer selective incentives or assistance without violating national treatment principles. This type of provision is rare, however, and most treaties require that foreign investors be accorded the same treatment as domestic or preferential investors.
- d. Investor Responsibilities:** The investor, or the investors' home countries, is required by very few treaties to ensure that their investments promote the development of the host country. Even a

UNCTAD report has noted how such responsibilities are "relatively absent" from international investment agreements.

2. The Right of Foreign Investors and States in Bilateral Investment Treaty

a. The Right of Foreign Investors in Bilateral Investment Treaty

In the field of international investment law, investors can be categorized as either natural or legal persons. Natural persons refer to physical persons who are citizens, nationals, or permanent residents of a state party; in this context, someone who is a party to a Bilateral Investment Treaty. On the other hand, legal persons generally refer to companies or other types of organizations established in accordance with the legal provisions of a contracting state. This represents a critical difference since this status determines who has legal standing to file claims in arbitration and who is protected under BITs. The position of investor in investment law complicates the determination of investor status when it comes to the issue of dual nationality, as many contemporary investors indeed hold multiple nationalities; which may create problems in the application of BITs. The tribunals usually determine the "effective nationality" of a person in the case of dual nationality, but this opens avenues for "treaty shopping," where investors position their investments to take advantage of more beneficial BITs. For instance, the ICSID Convention does not recognize dual

nationality if one of the nationalities belongs to a contracting state, thereby limiting the potential for the abuse of the system.²⁶

The determination of nationality becomes even more complex when considering legal persons. However, the most widely applied principle in establishing nationality is based on the entity's place of registration or incorporation. In this regard, *Tokios Tokeles v Ukraine*²⁷ can be mentioned as an appropriate example, wherein the tribunal focused on the significance of the place of registration and compliance with BIT provisions rather than on the nationality of the shareholders in the company. In contrast, the *Sedelmayer v Russia*²⁸ case opened up this interpretation by allowing protection for investments conducted through an enterprise located in a third country, where the de facto investor behind the corporate vehicle was recognized. These cases will represent the evolving trends of how the tribunals interpret and apply the concept of investor nationality to legal entities, which is why there is a need for accuracy and consistency in international investment law.²⁹

Regardless, the question of investor rights under international investment gained significant traction in recent years, reflecting the increasing importance of foreign direct investment in global economic

²⁶ Nikièma, Suzy H. *Best Practices: Definition of Investor*. International Institute for Sustainable Development, 2012.

²⁷ *Tokios Tokeles v. Ukraine*, ICSID Case No. ARB/02/18, Award (April 29, 2004).

²⁸ *Sedelmayer v. Russia*, Judgment of the City Court of Stockholm, Award (December 18, 2002).

²⁹ Sourav, Raisul Islam. "The Challenges of Defining Investor in International Investment Law." *Indian Journal of Law and Justice* 9 (2018): 145

dynamics. Investor rights are conceived as fundamental moral claims that ought to be protected from arbitrary expropriation and thus form the paradigmatic basis for investment-protecting provisions. These rights are intended to provide investors with security from expropriation and unfair treatment, thus facilitating an enabling environment for foreign investment. However, the implications of these rights go beyond basic economic considerations, raising fundamental questions concerning the balance between investor interest protection and the latitude for regulation that needs to be afforded to sovereign states in pursuit of social welfare objectives.³⁰

b. The Right of State in Bilateral Investment Treaty

In the creation of BITs, states have the right to exercise regulatory powers regarding public interest and welfare, while soliciting foreign investment at the same time. This right has undergone a remarkable shift in the balance between the protection of investors and state sovereignty. Past BITs, for example, have generally been concerned with the protection of foreign investments at often insurmountable costs of the regulatory autonomy of the host state. However, the advent of third-generation BITs reflects an increasing consciousness of the need for states to preserve policy space for the protection of legitimate public welfare issues, such as environmental protection and public health. This

³⁰ Kniess, J. (2018). Must We Protect Foreign Investors? *Moral Philosophy and Politics*, 5(2), 205–225.

is a paradigm shift, implying that investment law has increasingly been understood as a law that needs to balance the rights of investors with the sovereign rights of states to regulate in the public interest.³¹

F. Operational Definitions

This part briefly explained the terms used in the proposal to prevent any misunderstanding. These operational definitions are mentioned as follows:

1. Bilateral Investment Treaty (BIT) is a reciprocal agreement between two countries that aims to promote and safeguard investments within each other's territories.
2. Indonesia-Japan Economic Partnership Agreement (IJEPA) is a bilateral agreement between Indonesia and Japan designed to enhance economic cooperation between the two countries signed in 2007. Although it has been in place for years, the agreement serves as a broad framework for trade relations, covering various sectors such as trade in goods and services, intellectual property, labor mobility, and provisions related to investment.

G. Research Method

1. Type of Research

This study employs normative legal research, that focuses on analyzing legal materials to offer policy suggestions and critically evaluate legal documents in light of normative standards and principles regarding “Establishing Potential Bilateral Investment Treaty between Indonesia and

³¹ Baltag, Crina, Riddhi Joshi, and Kabir Duggal. "Recent Trends in Investment Arbitration on the Right to Regulate, Environment, Health and Corporate Social Responsibility: Too Much or Too Little?" *ICSID Review - Foreign Investment Law Journal* 38, no. 2 (Spring 2023): 381–421. <https://doi.org/10.1093/icsidreview/siac031>.

Japan to bridge IJEPA”. While this research is hypothetical, it is based on a logical analysis of current legal frameworks and trends, aiming to explore the potential for a new BIT that could address and supplement the provisions of IJEPA, particularly in areas of investment and economic cooperation.

2. Method of Approach

In this research, the author will use several approaches such as:

a. Statutory Approach

The statutory approach is an approach based on research on legal products, namely by examining the laws and regulations related to international investment and the specific treaties between Indonesia and Japan. This includes examining the Indonesia-Japan Economic Partnership Agreement (IJEPA), as well as other relevant bilateral and multilateral agreements. The author will also examine the Bilateral Investment Treaty (BIT) and its related legal frameworks, including international investment agreements and treaties.

b. History Approach

This approach is carried out by examining the background of the issues examined and the development of arrangements regarding the issues at hand, specifically the Bilateral Investment Treaty (BIT) between Indonesia and Japan. This includes analyzing Indonesia's reasons for the recent terminations of BITs, as well as Japan's history of investment policy, particularly regarding BITs. This historical context

will provide valuable insights regarding the development of investment policies and treaties between the two countries.

c. Conceptual Approach

This approach departs from the views and doctrines that have developed in legal studies, providing a comprehensive understanding of the legal framework that regulates international investment and the specific treaties between Indonesia and Japan.

3. Research Object

The object of this research is the examination of the Indonesia–Japan Economic Partnership Agreement (IJEPA) as the primary legal framework governing economic relations between Indonesia and Japan. This study focuses on analyzing the limitations of IJEPA in addressing investment-related issues and explores the potential establishment of a potential Bilateral Investment Treaty (BIT) to Bridge IJEPA

4. Sources of Data

The research data for this study will be taken from a range of legal materials, as follows:

a. Primary Legal Materials

This includes binding laws and regulations, such as treaties, international conventions, and domestic laws that provide a foundation for understanding the legal framework governing international investment and the specific treaties between Indonesia and Japan, including

- 1) Indonesia-Japan Economic Partnership Agreement;³²
- 2) Law No. 25 of 2007 on Investment;³³
- 3) Job Creation Law;³⁴
- 4) Foreign Exchange and Foreign Trade (外国為替及び外国貿易法);³⁵

b. Secondary Legal Materials

This includes journal articles, books, and other secondary sources that provide additional insights and analysis of the primary legal materials.

c. Tertiary Legal Materials

This category includes various supplementary legal resources, particularly those derived from legal dictionaries. These materials

³² Indonesia-Japan Economic Partnership Agreement (IJEPA), Ministry of Trade of the Republic of Indonesia, signed August 20, 2007, entered into force July 1, 2008.

³³ Republic of Indonesia. *Law No. 25 of 2007 on Investment*. Jakarta: State Secretariat of the Republic of Indonesia, 2007.

³⁴ Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law. State Gazette of the Republic of Indonesia, No. 100 of 2003, Supplement to the State Gazette of the Republic of Indonesia No. 6888

³⁵ Japan. *Foreign Exchange and Foreign Trade Act (外国為替及び外国貿易法)*. Law No. 228 of 1949, as amended. Tokyo: Ministry of Finance, Japan.

provide definitions, interpretations, and explanations of legal terms and concepts, offering valuable insights that support legal analysis and research. This category includes various supplementary legal resources, particularly those derived from legal dictionaries. These materials provide definitions, interpretations, and explanations of legal terms and concepts, offering valuable insights that support legal analysis and research.

5. Method of Data Collection

The data collection method is conducted through a literature study approach, by obtaining the necessary data from secondary sources. The data are taken from primary, secondary, and tertiary legal materials that are related to the object of research.

6. Data Analysis

The data analysis will involve a descriptive and normative analysis of the collected legal materials, with a focus on identifying the key issues, challenges, and opportunities related to the creation of a new Bilateral Investment Treaty (BIT) between Indonesia and Japan. This analysis will provide a systematic and factual understanding of the legal framework governing international investment and the specific treaties between Indonesia and Japan, which could contribute to the development of policy suggestions and recommendations for the creation of a new BIT.

H. Structure of Writing

Chapter I. This chapter discusses the Introduction consisting of the Background of the Study, Problem Formulation, Research Objectives, Originalities of Research, Literature Review, Operational Definitions, Research Methodology, and Structure of Writing.

Chapter II. This chapter discusses the Theoretical Review. This chapter will discuss in detail the theories related to problem formulations in this research, particularly about establishing a potential Bilateral Investment Treaty (BIT) between Indonesia and Japan to bridge IJEPA and specific provisions that should be included in the new BIT to strengthen investment relations between Indonesia and Japan.

Chapter III. This chapter will discuss the Findings and Results. This chapter will answer two problem formulations. First, regarding the establishment of a potential Bilateral Investment Treaty (BIT) between Indonesia and Japan to bridge IJEPA. Second, regarding whether specific provisions should be included in the new BIT to strengthen investment relations.

Chapter IV. This final chapter presents the Conclusion and Recommendations drawn from the analysis and findings of the two problem formulations. The conclusion summarizes the main points from the study, highlighting the main findings and implications of the research. The recommendations, based on the author's analysis and thoughts, provide suggestions for Establishing Bilateral Investment Treaty (BIT) between Indonesia and Japan to bridge IJEPA, taking into account the historical, statutory, and conceptual

approaches examined in this study, or make suggestions to revise existing agreement provisions to adapt with the current needs of society.